Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL–CIO, and International Longshoremen and Warehousemen's Union, AFL–CIO, Locals 10, 34, and 91 *and* Schnitzer Industries d/b/a Schnitzer Steel Products Company, Inc. and Shipyard Laborers, Local 886, Laborers International Union of North America. Case 32–CD–123

May 20, 1991

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

The charge in this Section 10(k) proceeding was filed June 22, 1991, by the Employer, alleging that the Respondents, International Longshoremen and Warehousemen's Union, AFL–CIO, Locals 10, 34, and 91 (Local 10, Local 34, Local 91, or ILWU collectively) violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees they represent rather than to employees represented by Shipyard Laborers, Local 886, Laborers International Union of North America (Local 886), and that the Respondent, Operating Engineers Local Union No. 3 of the International Union of Operating Engineers, AFL–CIO (Local 3), violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by the ILWU. The hearing was held August 16, 1990, December 14, 1990, and January 23, 1991, before Hearing Officers Louise Houston and Clark Finkbinder.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officers' rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Company, an Oregon corporation, is engaged in the business of scrap metal processing, recycling, and sale for export of scrap metal at its facility in Oakland, California, where it annually receives revenues in excess of $50,000 directly from business located outside the State of California. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The record shows, and we find, that Local 10, Local 3, and Local 886 are labor organizations within the meaning of Section 2(5) of the Act. The parties present at the hearing agreed that Local 91 represents only supervisors. We find, based on the record, that Local 91 is not a labor organization. The Employer asserted that Local 34 only represents supervisors. The ILWU representative did not endorse the Employer's assertion, but the ILWU introduced no evidence concerning Local 34's labor organization status. Because the record lacks any evidence establishing the labor organization status of Local 34, we are unable to find that Local 34 is a labor organization within the meaning of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer processes, recycles, and exports scrap metal at a dockside facility in Oakland, California. The Employer loads and unloads ships at the dock. The loading operation consists of tying up and letting go of ships (also called line work) and operating a crane. In August 1990, the Employer began operating a newly constructed shiploading facility, using a dockside crane to load scrap metal onto ships. Prior to the installation of the new crane, the Employer used a barge-based crane to load the ships.

Before commencing operation of the dockside crane, the Employer contacted the attorney representing the ILWU locals on two occasions to discuss work assignments related to the new operation. In April 1990, the Employer stated that laborers should continue doing the line work. On June 13, the ILWU attorney stated that the ILWU local would claim the tying up, letting go,[1] and shiploading functions in connection with the loading of bulk scrap metal onto ocean-going vessels, including operation of the crane, and the positions of hatchtender, walking boss, and supercargo. The attorney also stated that they would picket if the work were awarded to employees represented by another union. The Employer notified Local 3 of the ILWU's position. Local 3 responded that it would picket if the work of operating the dockside crane were awarded to employees represented by another Union.

On June 22, 1990, the Employer filed the instant unfair labor practice charge against the ILWU and Local 3 and a unit clarification petition pertaining to hatchtenders, supercargoes, and walking bosses.[2] The Regional Director has held the unit clarification pro-

[1] The Employer claims that employees represented by Local 886 have been performing the line work for approximately 20 years.

[2] The record shows that during the period in which the cargo loading process was performed using the barge-based crane, the hatchtender was responsible for giving directions by hand signal to the crane operator and also acted as safety man; the supercargo performed paperwork relative to the cargo loading; and the walking boss oversaw the loading operations. Upon installation and use of the dockside crane, the Employer eliminated these positions, all previously performed by ILWU members. It asserts that because of the unique construction of the new crane and other procedures now used, these positions are no longer necessary.

ceeding in abeyance pending the outcome of this 10(k) proceeding.

During the hearing, the attorney representing Local 886 stated that Local 886 would picket if the line work were assigned to the employees represented by the ILWU locals. Subsequently, Local 886 sent a letter to the Regional Director disclaiming the line work. During the hearing, the ILWU also sent a letter to the Regional Director disclaiming the work of operating the new dock crane.

B. *Work in Dispute*

The disputed work involves the tying up, letting go, and shiploading functions in connection with the loading of bulk[3] (as distinguished from shredded) scrap metal onto ocean-going vessels at the Employer's Oakland, California facility.

C. *Contentions of the Parties*

The Employer contends that operation of the new crane should be awarded to employees represented by Local 3 based on economy and efficiency, industry practice, and employer preference and past practice, and that the line work should be awarded to employees represented by Local 886 based on economy and efficiency, employer preference and past practice, and industry practice. The Employer further claims that Local 886's disclaimer is ineffective because the employees represented by Local 886 have continued to perform the line work. Finally, the Employer requests that the 10(k) and the unit clarification proceedings be consolidated and that the Board clarify that the classifications of hatchtender, supercargo, and walking boss involved in the loading of ships no longer exist and therefore should not be included in any work assignment award, or that the Board revoke the ILWU's certification.[4]

Local 10 asserts that there is no jurisdictional dispute over a portion of the work in dispute because it has disclaimed interest in the operation of the new crane. Local 10 also asserts that there is no jurisdictional dispute over the line work because, although Local 10 continues to claim the work, Local 886 has disclaimed the work. Finally, Local 10 asserts that there is no jurisdictional dispute over the hatchtender, supercargo, and walking boss classifications because no other union has claimed the work.

Local 3 neither filed a brief, nor appeared at the hearing.

Local 886 did not file a brief, and did not make a statement of position at the hearing.

D. *Applicability of the Statute*

As discussed above, both Local 886 and Local 10 claimed the work of tying up and letting go at the Employer's facility. The attorney representing the ILWU locals stated that the ILWU claimed the work of tying up and letting go of ships at the Employer's facility, and that if the work were assigned to another union, the ILWU would picket. The attorney representing Local 886 stated at the hearing that Local 886 claimed the work of tying up and letting go of the ships at the Employer's facility, and that if the work were assigned to another union, Local 886 would picket. Subsequently, Local 886 sent a letter to the Regional Director disclaiming the line work. Local 886-represented employees, however, continue to do the line work without (so far as the record shows) restraint, discipline, or threats from their Union. Therefore, we find that Local 886's disclaimer is ineffective. See *Electrical Workers Local 610 (Landau Outdoor Sign Co.)*, 225 NLRB 320, 321 (1976).

We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred insofar as the line work is concerned and that there exists no agreed upon method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute involving the line work is properly before the Board for determination.[5]

As discussed above, the attorney representing the ILWU locals stated at the hearing that the ILWU disclaims any interest in operating the dockside crane. There is no evidence that the ILWU has acted in any way inconsistent with its disclaimer of the work since making the disclaimer.

We find that the ILWU effectively disclaimed the work of operating the crane, and that there are currently no competing claims for that work. See *Painters Local 1396 (Wolff & Sons Painting)*, 246 NLRB 442, 444 (1979). Accordingly, our determination of dispute will be limited to the line work.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense

[3] The record shows that the disputed shiploading functions involve work related to the operation of the new crane.

[4] We deny the request to consolidate on the grounds that the Regional Director acted within his discretion in deciding to hold the unit clarification proceeding in abeyance pending resolution of this case.

We also deny the motion to revoke the ILWU's certification as inappropriate in a 10(k) proceeding.

[5] We note that although Local 10 made its threat to picket before the Employer actually began using the new shiploading facility with dockside crane, the Employer at that time had already made a specific assignment of the line work. The Board has held that jurisdictional disputes regarding prospective work assignments are appropriate for the Board's consideration in 10(k) proceedings. See *Stage Employees IATSE Local 659 (King Broadcasting Co.)*, 216 NLRB 860, 862 (1975).

and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certification and collective-bargaining agreements

Neither Local 10 nor Local 886 is a certified representative of Schnitzer Steel's employees. Local 886 has a collective-bargaining agreement with the Employer which arguably covers the line work. Local 10 asserts that it, too, has a collective-bargaining agreement with the Employer which arguably covers the line work.[6] We find that this factor favors neither group of employees.

2. Employer preference

The Employer prefers that the line work be awarded to employees represented by Local 886. Therefore, we find that the factor of employer preference favors an award to the employees represented by Local 886.

3. Past practice

The Employer claims that Local 886-represented employees have been performing the line work for approximately 20 years. However, Local 10 claims that employees it represents have been performing the work. We find the record concerning the Employer's past practice ambiguous and therefore do not rely on this factor.

4. Area practice

There are two other employers in the area with operations comparable to the Employer's. At one employer's facility, the line work is performed by Local 3-represented employees, and at the other, the work is performed by Teamsters-represented employees. This factor does not favor an award of the line work to either group of employees.

5. Relative skills

The Employer claims that because the employees represented by Local 886 have been performing the line work for over 20 years, they have greater relative skill. However, Local 10 also claims that employees it represents have been performing the work. We find the record inconclusive and do not rely on this factor.

6. Economy and efficiency of operations

The Employer employs approximately 70 employees represented by Local 886, who perform various maintenance duties in the yard. The line work takes approximately 30–60 minutes to perform. The Local 886-represented employees can leave their maintenance duties to perform the line work and return to their other duties when the line work is finished. While a ship is in the dock, the Local 886-represented employees' shifts can be expanded from 8 to 12 hours and there can be back-to-back shifts.

The Local 10-represented workers are not regular employees. The ILWU master agreement provides for an 8 a.m. to 5 p.m. workday with a second shift beginning at 7 p.m. The agreement also requires that ILWU-represented employees be paid for a minimum of several hours.

We conclude that it is more efficient for the Employer to use Local 886-represented employees. They are available throughout the day and night shifts continuously and are available to do other work before and after the work in dispute is completed. We find that this factor favors an award of the work to the employees represented by Local 886.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Local 886 are entitled to perform the disputed tying up and letting go work. We reach this conclusion relying on the factors of employer preference and economy and efficiency of operations.

In making this determination, we are awarding the work to employees represented by Local 886, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Schnitzer Industries d/b/a Schnitzer Steel Products Company, Inc. represented by Shipyard Laborers, Local 886, Laborers International Union of North America are entitled to perform the work of tying up and letting go of ships at the Oakland, California dockside facility.

2. International Longshoremen and Warehousemen's Union, AFL–CIO, Local 10 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force the Employer to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Longshoremen and Warehousemen's Union, AFL–CIO, Local 10 shall notify the Regional Director for Region 32 in writing whether it will refrain from forcing the Employer, by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with the determination.

[6] The Employer does not admit that it is a party to the ILWU contract in the record, but the Employer concedes that it has an understanding with the ILWU covering the line work.